

Remarks

These remarks and the amendments above are in Response to an Office Action mailed March 23, 2004.

Certain typographical errors in the specification have been corrected. Applicants submit that no new matter has been introduced into the application by these amendments.

Claims 1 and 6 have been amended to correct typographical errors in the electronic form of the application as submitted after filing the original application. Thus, the pending claims are identical to those originally filed in the application, and Applicants submit that there have been no narrowing amendments.

Claims 12-20 have been added to claim additional aspects of the invention. Applicants respectfully submit that claims 19 and 20 are supported in the specification, at least in paragraph [0008], which discloses the plant *Polygonum cuspidatum*, which is known by workers of ordinary skill in the art to contain resveratrol and glycons of resveratrol. Thus, Applicants submit that no new matter has been introduced into the application by the addition of new claims.

I. Rejections Under 35 U.S.C. §102 and 103

Claims 1-11 stand rejected under 35 U.S.C. §102(e) as anticipated by, or alternatively as obvious over, Sovak et al., U.S. 6,472,415 ("415") or U.S. 6,184,249 ("249"). Applicants note that those patents derived from U.S. Patent Application Serial No: 09/502,376 (the "376" application) and Serial No: 09/215,351 (the "351" application), respectively.

Applicant herein submits that the invention claimed in the instant application and disclosed in the 415 and 249 patents is not "by another," and requests the rejections to be withdrawn.

The only difference in inventorship between the instant application and the 415 and 249 patents is the absence of James Gordon Douglass III in the instant application.

Applicants herewith provide two Declarations, one from Allen L. Seligson (Attached hereto as Appendix I) and the other from James Gordon Douglass, III (Attached hereto as Appendix II), both of which provide evidence that subject matter claimed in the instant application derived from the same inventive entity that contributed to disclosed but unclaimed subject matter of the applications that matured into the 249 and 415 patents, the 351 application the 376 application, respectively.

Specifically, the Declaration of James Gordon Douglass III states in part: "I did not contribute to subject matter in the 503 application" Douglass Declaration, paragraph 4.

The Seligson Declaration supports the identity of the inventive entities of the subject matter now claimed. The Seligson Declaration states in part: "The 415 and 249 patents contain disclosure not contained in the 503 application and there is subject matter common to both the disclosures of both the 416 [sic] and 249 patents and the 503 application." Seligson Declaration, paragraph 3. Further, "Mr. James Gordon Douglass III is listed as an inventor on the 415 and 249 patents and contributed to subject matter claimed in the 415 and 249 patents that is not common to the subject matter disclosed and claimed in the 503 application." Seligson Declaration, paragraph 4. Moreover, "Mr. Douglass did not contribute to the subject matter common to the 415 and 249 patents and the 503 application." Seligson Declaration, paragraph 5. Additionally, "Mr. Douglass did not contribute to any of the subject matter claimed in the 503 application and is not listed as an inventor of the 503 application." Seligson Declaration, paragraph 6.

Therefore, Applicants submit that the inventive entities of the subject matter disclosed in the 249 and 415 patents but not claimed therein and the instant application is the same, and thus that the instant invention is not "by another," and request that the Examiner reconsider the rejections under 35 U.S.C. § 102 or 103 and find the claims allowable.

The references cited by the Examiner but not relied upon have been reviewed, but are not believed to render the claims unpatentable, either singly or in combination.

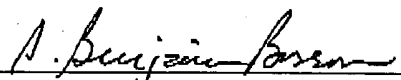
In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: June 22, 2004

By: _____


D. Benjamin Borson, Ph.D.
Reg. No. 42,349

FLIESLER MEYER LLP
Four Embarcadero Center, Fourth Floor
San Francisco, California 94111-4156
Telephone: (415) 362-3800